

## NEW JERSEY RACING COMMISSION

### Harness Racing Rules

Proposed Amendments: N.J.A.C. 13:71-4.1, 7.26

Proposed New Rule: N.J.A.C. 13:71-7.26A

Authorized By: New Jersey Racing Commission, Francesco Zanzuccki, Executive Director

Authority: N.J.S.A. 5:5-30

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2003 - \_\_\_\_\_

Submit written comments by October 17, 2003 to:

Francesco Zanzuccki, Executive Director  
New Jersey Racing Commission  
P.O. Box 088, 140 East Front Street  
Trenton, New Jersey 08625-0088

The agency proposal follows:

### **Summary**

The New Jersey Racing Commission ("Racing Commission") is interested in obtaining public comment regarding the proposed amendments to rules N.J.A.C. 13:71-4.1(Definitions) and N.J.A.C. 13:71-7.26 (Requirements: Farms and Training Facilities and the Persons Situated Thereon), which are being proposed simultaneously and in connection with new rule N.J.A.C. 13:71-7.26A (Penalties for Violation of N.J.A.C. 13:71-7.26). The proposed amendments to N.J.A.C. 13:71-4.1 set forth and define terms which are used in N.J.A.C. 13:71-7.26 and proposed new rule N.J.A.C. 13:71-7.26A as well as certain

terminology utilized in other, current rules of the Racing Commission, which have been misconstrued or misunderstood.

Pursuant to the Racing Commission's current rules, persons who have had their license suspended or revoked and persons who are unlicensed or ineligible for licensure are barred from licensed farms, training facilities and racing associations. Such persons, who have been defined in the proposed amendments to N.J.A.C. 13:71-4.1 as a "person not in good standing with the Commission," are also barred from unlicensed property if racehorses are located there.

"Racehorse" is being defined for the first time. Although one might consider the term "racehorse" to be self-explanatory, definition has become necessary in response to an increase in unauthorized activities of unlicensed personnel, who work with or have access to racehorses on licensed and unlicensed farms and training centers in violation of the Racing Commission's rules. Such "persons not in good standing with the Commission," as defined below, have consistently attempted to avoid penalties for their impermissible activities by contending that the racehorses which they were caught working with or having access to were "turned out," i.e., not in training, and arguing that these horses therefore cannot be considered racehorses.

The proposed definition of "racehorse," the proposed amendments to N.J.A.C. 13:71-7.26, and proposed new rule N.J.A.C. 13:71-7.26A, consistent with the Commission's current rules, set forth the mandate that any such racehorse be stabled at all times on licensed

property. Pursuant to the proposed amendments to N.J.A.C. 13:71-4.1, “‘Racehorse’ means any standardbred horse that is or should be registered with the United States Trotting Association, Canadian Trotting Association or another recognized trotting association that is or will be eligible to participate in a horseracing contest under the jurisdiction of the New Jersey Racing Commission.” In contrast, a “Nonracing horse” is defined to mean “foals, weanlings, yearlings, broodmares which no longer participate in racing and stallions which no longer participate in racing.”

The Racing Commission has jurisdiction over all premises where racehorses are situated including unlicensed farms and training facilities. The proposed amendments to N.J.A.C. 13:71-4.1 define “Farm” as “any property with accommodations suitable for stabling horses.” As set forth in the proposed amendments to N.J.A.C. 13:71-4.1, a “Training facility” is “any property with a track suitable for training racehorses” and “‘Farms and training facilities that are required to be licensed’ means any farm or training facility which has allowed a racehorse remain overnight on the property.” A property owner or lessee of a farm or training facility that is required to be licensed may not circumvent Racing Commission jurisdiction by failing or refusing to license the property where racehorses are located.

The proposed amendments to N.J.A.C. 13:71-4.1 define “Individuals responsible for the farm or training facility” as “the owner(s) and manager(s) of the farm or training facility as well as any other person who is responsible for the daily management of

the farm or training facility for at least ninety days within a calendar year.”

Horseracing is a highly regulated industry and the Racing Commission's jurisdiction includes all property where racehorses are located and licensed activities take place. The Commission's authority extends to the regulation of persons who have contact with or access to racehorses. These issues of the Racing Commission's jurisdiction and authority over both licensed and unlicensed persons were addressed and answered unequivocally in Wendling v. New Jersey Racing Commission, 279 N.J. Super. 477 (App. Div. 1995). In Wendling, the Racing Commission fined a licensed trainer who had employed an unlicensable person to perform general farm maintenance on licensed property where racehorses were located. Evidence showed that the unlicensable person had free access to the race horses stabled at the farm. Id. at 480-81. The court upheld the Commission's determination that licensed trainers may not employ disqualified persons. Id. at 483.

In order to protect the integrity of the racing industry, the Racing Commission must and does have regulatory authority over all persons who have access to racehorses. “The proscription against a licensed trainer employing or harboring disqualified personnel is designed to aid the Commission in preserving public confidence in the racing industry by controlling which persons have access to horses.” Id. at 483. In its regulation of this industry, New Jersey has a compelling interest in ensuring that “persons who may be in the position to interfere with the fair and proper conducting of the racing industry are effectively

policed and regulated.” State v. Dolce, 165 N.J. Super. 275 (App. Div. 1981). Therefore, persons not in good standing with the Commission are barred from contact with or access to racehorses even when the racehorse is on unlicensed property. Participation in the horseracing and attendant gambling industry is a privilege and not a right, State v. Garden State Racing Ass’n., 136 N.J.L. 173, 175-76 (E.& A. 1947), and the State of New Jersey, through its Racing Commission, may strictly regulate what it can prohibit entirely. Posadas de Puerto Rico Assoc. v. Tourism Co., 478 U.S. 328 (1986).

The proposed amendments to N.J.A.C. 13:71-7.26 restate and clarify these current prohibitions, enumerate specific requirements for the stabling of racehorses in New Jersey, set forth mandates for licensed farms and training facilities, and establish conditions and criteria for administrative entry and inspection of licensed farms and training facilities by investigative staff and appointed agents of the Racing Commission.. The proposed amendments to N.J.A.C. 13:71-7.26 also establish conditions and criteria for administrative entry and inspection by investigative staff and appointed agents of the Racing Commission of those farms and training facilities that are required to be licensed but have failed to apply for licensure.

The proposed amendments to N.J.A.C. 13:71-7.26 expand upon the current rule which mandates that “[n]o horse may start in any race wherein pari-mutuel wagering is conducted unless stabled on the grounds of a racing association licensed by the Commission or at a farm or training facility licensed by the Commission.” The proposed amendments to

N.J.A.C. 13:71-7.26 make it clear that “[a]ll farms and training facilities wherein racehorses are located must apply for and receive a license from the Commission” and define “stabled” to mean “the premises at which a racehorse maintains a regular and continuous physical presence.” Thus, in order for a racehorse to be stabled at a licensed premise in compliance with this rule, the racehorse must be physically situated at the licensed premise on a continuous basis.

The proposed amendments to N.J.A.C. 13:71-7.26 explicitly prohibit “turning a racehorse out” on unlicensed property. If a racehorse is “turned out” or for any other reason relocated between race competitions from a licensed farm or training facility to a second farm or training facility, a violation of this rule would occur unless that second farm, training facility or other premises is also licensed by the Commission in accordance with this rule.

Similar to the current rule, these proposed amendments explain that “[n]othing in this rule shall prohibit any horse stabled outside the State of New Jersey from being transported directly to any racing association in this State to start in any race upon which pari-mutuel wagering is conducted” if two conditions are met. First, the owner and trainer of the racehorse must ensure, while the horse has been in their custody and control, that “no person not in good standing with the Commission has acted in any capacity of caretaker, groom, assistant trainer, trainer, driver or other attendant with respect to the care or training of the racehorse prior to its transportation into the State of New Jersey.” Second, all persons

attending to the racehorse in New Jersey must be licensed by the New Jersey Racing Commission.

The proposed amendments to N.J.A.C. 13:71-7.26 also correct an erroneous practice which has developed in this State when an owner of a farm or training facility owns all of the racehorses present upon the property. In the past, some such farms or training facilities would forego licensure as an off-track stabling facility as long as the property owner had obtained a license for ownership of the racehorses. The proposed amendments to N.J.A.C. 13:71-7.26 clarify that the owner of every farm and training facility which does or will stable racehorses must apply for and receive a license from the Racing Commission. Pursuant to these proposed amendments, the Racing Commission may waive the \$50.00 annual licensing fee if the farm or training facility is owned by an individual licensed by the Commission who has paid the fee required in N.J.A.C. 13:71-7.1 for an individual owner's license; the only horses located at the farm or training facility are owned entirely and exclusively by the owner of the farm or training facility who is individually licensed; and the Commission posts notice of the fee waiver in all offices where license applications may be submitted.

The proposed amendments to N.J.A.C. 13:71-7.26 place an obligation on all farms and training facilities, and the individuals responsible for the farm or training facility, "to ensure that any person not in good standing with the Commission is restricted from entering any property where racehorses are located." Pursuant to these proposed

amendments, “[a] farm, training facility and the individuals responsible for the farm or training facility shall notify the Commission immediately if an unlicensed person acts in any capacity of caretaker, groom or other attendant with respect to the care, custody or training of a racehorse located on the farm or training facility.”

The proposed amendments to N.J.A.C. 13:71-7.26 restate the current regulatory requirements that all racehorses on a licensed farm or training facility must be under the care, custody and control of a licensed trainer and all racehorse owners must ensure that the trainer(s) of their racehorses possesses, at all times, a valid New Jersey trainer’s license. Racehorse owners are responsible for keeping themselves apprised of their trainer(s) licensure status and shall remove their racehorses immediately from the trainer(s) if his license is suspended, revoked or otherwise lapses. These proposed amendments, consistent with current regulatory requirements, require the trainer “to ensure that only individuals licensed by the Commission act in any capacity of caretaker, groom or other attendant with respect to the care, custody or training of a racehorse . . . and ensure that persons not in good standing with the Commission do not have access to or contact with any racehorse under his or care, custody and control.” “Access to” and “Contact with” are defined as set forth below in the proposed amendments to N.J.A.C. 13:71-4.1.

Currently, brood mares, foals, weanlings, yearlings, stallions and other horses which are not racehorses may be kept at an unlicensed farm or training facility where unlicensed persons may legitimately care for them. The proposed amendments to N.J.A.C.

13:71-7.26 acknowledge these circumstances but emphasize that when these nonracing horses are present at a licensed farm or training facility, however, only individuals licensed by the Commission may be present on the licensed property. Therefore, “only individuals licensed by the Racing Commission may act in any capacity of caretaker, groom or other attendant with respect to the care, custody or training of these nonracing horses.”

The proposed amendments to N.J.A.C. 13:71-7.26 also set forth current administrative requirements on farms and training facilities which, up until now, have not been addressed in the form of detailed rule requirements. For example, these proposed amendments make it clear that “[a]ll licensed farms and training facilities shall permit investigative staff to enter the premises at any time to inspect, ascertain whether the premises and all licensees are in full compliance with the Commission's rules, and determine whether drugs, substances foreign to the natural horse and instruments used for the administration of drugs or foreign substances are present.” To facilitate entry and inspection of licensed farms and training facilities, the Executive Director or the State Steward may issue an administrative directive setting forth specific instructions for investigative staff.

According to the proposed amendments to N.J.A.C. 13:71-7.26, the persons responsible for the farm or training facility, the owner of the farm or training facility, a lessee of the farm or training facility and the licensees present shall permit investigative staff unrestricted access to all areas, including but not limited to, in and around barns, areas where racehorses are or could be located, appurtenances to areas where racehorses are or could be

located, areas where equipment or tack is or could be located and all enclosures present therein. See State v. Turcotte, 239 N.J. Super. 285 (App. Div. 1990)(upholding the Racing Commission's regulatory authority to order administrative searches). Pursuant to the proposed amendments to N.J.A.C. 13:71-4.1, "Appurtenances" means "all areas attached, adjacent or near to all barns and stables, all property where racehorses are or can be located and all areas used in connection with the care, training or racing of horses, including, but not limited to offices and areas which are not used exclusively as a residence." "Enclosures" include "all cabinets, cases, cupboards, chests, closets, trunks, containers, desks, drawers and other areas and objects where items may be placed as well as the interior and trunk of vehicles located on the premises."

The proposed amendments to N.J.A.C. 13:71-7.26 require investigative staff to carry identification and produce it upon demand. Investigative staff shall identify all persons who have access to the horses located on the premises. All licensees shall fully cooperate in the identification of the horses present and persons not licensed. Investigative staff may videotape or photograph any part or all of an inspection. In addition, in the event that investigative staff seizes any object present in violation of the Commission's rules, staff shall give a receipt for the property seized to the person from whom it was taken or in whose possession it was found or, in the absence of such person, leave a receipt for the property seized in or upon the location from which the property was taken.

The proposed amendments to N.J.A.C. 13:71-7.26, like current regulatory

requirements, mandate that all licensees shall fully cooperate with the requests and instructions of the investigative staff. Upon request, all licensees shall open locked areas including, but not limited to locked doors, locked enclosures, locked automobiles and locked automobile trunks. Investigative staff shall inform any licensee who fails to cooperate that he or she has an affirmative duty to cooperate pursuant to N.J.A.C. 13:71-23.12 and that sanctions such as suspension, fines or license revocation may be imposed for failure to cooperate.

Further, pursuant to the proposed amendments to N.J.A.C. 13:71-7.26, investigative staff shall have the authority to inspect any enclosure which is alleged to be the personal property of a person not licensed by the Commission if investigative staff has reason to believe that drugs, substances foreign to the natural horse and instruments used for their administration are located in the enclosure. If the person not licensed by the Commission objects or does not consent to the inspection, investigative staff may seek the assistance of the licensees present as well as State, county or local police in detaining the enclosure until investigative staff obtains an administrative warrant from the Executive Director or State Steward.

The proposed amendments to N.J.A.C. 13:71-7.26 also restate current regulatory requirements applicable to those farms and training facilities that are required to be licensed but have failed to apply for licensure. According to these proposed amendments, any farm or training facility that is required to be licensed shall permit investigative staff to

enter the premises to inspect, determine whether racehorses are located there, ascertain whether the premises and persons present are otherwise in full compliance with the Commission's rules and investigate information indicating that drugs, substances foreign to the natural horse or instruments used for their administration are present. See State v. Turcotte, supra, 239 N.J. Super. at 296 (upholding the Racing Commission's regulatory authority to order administrative searches of unlicensed property). To facilitate entry to farms and training facilities that are required to be licensed but have failed to apply for licensure, the Executive Director or the State Steward shall issue an administrative warrant setting forth instructions for and restrictions on entry and inspection. The administrative warrant may require investigative staff to seek the assistance of State, county or local police in carrying out the terms of the warrant.

An administrative warrant shall include the following restrictions on entry and inspection of unlicensed farms or training facilities. The administrative warrant shall require the investigative staff to execute the warrant during daylight hours, present identification upon entrance to the property, and allow inspection of the administrative warrant to all persons who ask. The administrative warrant shall clearly direct the investigative staff to ascertain whether there are racehorses located upon the property and identify all persons who have access to them. If staff ascertains that there are no racehorses present, staff shall immediately leave the property if asked to do so by the owner or lessee of the property. No further inspection of the property may take place unless the owner or lessee of the property

consents in writing.

In the event that investigative staff seizes any object present in violation of the Commission's rules, staff shall give a receipt for the property seized to the person from whom it was taken or in whose possession it was found or in the absence of such person, leave a receipt for the property seized in or upon the location from which the property was taken. Finally, the administrative warrant shall clearly state that the Commission's investigative staff shall not have the authority to inspect any building used exclusively as a residence unless the owner or lessee consents in writing.

According to the terms of the proposed amendments to N.J.A.C. 13:71-7.26, upon identifying the presence of racehorses at a farm or training facility which is not licensed, the investigative staff shall have unrestricted access to all areas including, but not limited to, in and around barns, areas where racehorses are or could be located, appurtenances to areas where racehorses are or could be located and all enclosures present therein. All persons present upon an unlicensed farm where racehorses are located shall fully cooperate with the requests and instructions of the investigative staff. Upon request, persons present shall open locked areas including, but not limited to locked doors, locked enclosures, locked automobiles and locked automobile trunks. Failure to cooperate may result in the imposition of administrative sanctions. Investigative staff shall have the authority to inspect any enclosure which has been alleged to be the personal property of a person not licensed by the Commission if the administrative warrant issued by the Executive

Director or State Steward specifically authorizes investigative staff to inspect all enclosures including those claimed to be personal property. If the person not licensed by the Commission objects or does not consent to the inspection, investigative staff shall seek the assistance of State, county or local police in detaining the enclosure until a civil search warrant may be obtained from the Superior Court of New Jersey for the County of Mercer on an emergent basis.

Proposed new rule N.J.A.C. 13:71-7.26A recognizes the Commission's jurisdiction over all property where racehorses are located and specifically establishes penalties for violation of the mandates set forth in N.J.A.C. 13:71-7.26. The proposed new rule imposes a \$1,000 fine on any farm or training facility that is required to be licensed and on the individuals responsible for the farm or training facility for the first violation of N.J.A.C. 13:71-7.26(a) or (c), as amended, if the farm or training facility is otherwise in compliance with all other rules of the Commission. The proposed amendments to N.J.A.C. 13:71-7.26(a) and (c) requires all farms and training facilities wherein racehorses are located to apply for and receive a license from the Commission. Upon receipt of notice that the continued operation of the farm or training facility violates the Commission's rules, the proposed new rule N.J.A.C. 13:71-7.26A requires the individuals responsible for the farm or training facility to bring the farm or training facility into compliance with the Commission's rules within 48 hours and mandates that all activities requiring licensure must cease immediately until full compliance has been achieved. Pursuant to the terms of the

proposed new rule, the farm or training facility and the individuals responsible for the farm or training facility shall each be liable for an additional penalty of a \$2,500 fine for each subsequent day of noncompliance.

Proposed new rule N.J.A.C. 13:71-7.26A imposes a \$5,000 fine on any farm or training facility that is required to be licensed and on the individuals responsible for the farm or training facility for the first violation of N.J.A.C. 13:71-7.26(a), (c) or (h), as amended, if the farm or training facility fails to obtain a license and has allowed a person not in good standing with the Commission to have access to or contact with any racehorse located on the farm or training facility. Upon receipt of notice that the continued operation of the farm or training facility violates the Commission's rules, the new rule requires the individuals responsible for the farm or training facility to bring the farm or training facility into compliance with the Commission's rules within 48 hours, to cease all activities requiring licensure immediately, and to prohibit persons not in good standing with the Commission from access to or contact with racehorses. The farm or training facility and the individuals responsible for the farm or training facility shall each be liable for an additional penalty of a \$5,000 fine for each subsequent day of noncompliance. The proposed new rule mandates that the person not in good standing with the Commission shall be liable for a \$5,000 fine for each day present as well as suspension, permanent license ineligibility and license revocation. The proposed new rule also establishes that for repeat offenders, the Commission may rule the person not in good standing with the Commission off all grounds

subject to the Commission's jurisdiction for life.

The proposed new rule N.J.A.C. 13:71-7.26A imposes a \$2,500 fine for the first violation of N.J.A.C. 13:71-7.26(h), as amended, on a licensed farm or training facility and on the individuals responsible for the farm or training facility if the farm or training facility has allowed a person not in good standing with the Commission to have access to or contact with any racehorse located on the farm or training facility. A licensed farm or training facility and the individuals responsible for the farm or training facility who commit a second violation of this rule shall each be liable for a \$5,000 fine for each subsequent day of noncompliance. Furthermore, pursuant to the terms of the proposed new rule, “the person not in good standing with the Commission shall be liable for a \$5,000 fine for each day present at a farm or training facility as well as suspension, permanent license ineligibility and license revocation.” The proposed new rule also reemphasizes the current Racing Commission requirement that during any suspension, license ineligibility or license revocation, the Commission shall rule the person not in good standing with the Commission off all grounds subject to the Commission's jurisdiction for the duration of the penalty and, for repeat offenders, the Commission may rule the person not in good standing with the Commission off all grounds subject to the Commission's jurisdiction for life.

Proposed new rule N.J.A.C. 13:71-7.26A specifies penalties for racehorse owners and trainers who employ persons not in good standing with the Commission. Under current rules, owners are responsible for ensuring that the trainer hired to care for their

horses is, at all times, properly licensed. Similarly, trainers are responsible for ascertaining the licensure status of a person hired to care for racehorses. The proposed new rule mandates that an owner or trainer shall be liable for a \$2,500 fine for the first violation of N.J.A.C. 13:71-7.26(f) if either hires a person not in good standing with the Commission. An owner or trainer who commits a second violation of this rule shall be liable for a \$5,000 fine. An owner or trainer who commits a third violation of this rule shall be liable for a minimum fine of \$5,000 and a minimum suspension of 1 year. The person not in good standing with the Commission hired to care for racehorses shall be liable for a \$5,000 fine for each day present at a farm or training facility as well as suspension, permanent license ineligibility and license revocation. The Commission shall rule the person not in good standing with the Commission off all grounds subject to the Commission's jurisdiction for the duration of the penalty and, for repeat offenders, the Commission may rule the owner, trainer or person not in good standing with the Commission off all grounds subject to the Commission's jurisdiction for life.

The proposed new rule also specifies penalties for trainers who allow persons not in good standing with the Commission to have access to or contact with racehorses. For a first violation of N.J.A.C. 13:71-7.26(f) if the trainer has allowed a person not in good standing with the Commission to have access to or contact with any racehorse under his or care, custody and control, a trainer shall be liable for a \$1,000 fine. A trainer who commits a second violation of this rule shall be liable for a \$2,500 fine for each subsequent day of

noncompliance and a trainer who commits a third violation of this rule shall be liable for a minimum fine of \$5,000 and a minimum suspension of 1 year. The person not in good standing with the Commission is liable for a \$5,000 fine for each day present at a farm or training facility as well as suspension, permanent license ineligibility and license revocation. The Commission shall rule the person not in good standing with the Commission off all grounds subject to the Commission's jurisdiction for the duration of the penalty and, for repeat offenders, the Commission may rule the person not in good standing with the Commission off all grounds subject to the Commission's jurisdiction for life.

The current rules of the Racing Commission require racehorses to be stabled on licensed property. The proposed new rule establishes mandatory penalties for violations of this rule. The new rule mandates that “[a]ny trainer who enters a racehorse which is not stabled in compliance with N.J.A.C. 13:71-7.26(a) to race in New Jersey and any person who acts in concert with that trainer in contravention of the Commission’s rules shall be liable for a \$5,000 fine and 30-day suspension for each horse entered.” According to the proposed new rule, all racehorses in the trainer's care, custody and control shall be subject to an immediate declaration of ineligibility to participate in racing until stabled at a properly licensed farm or training facility within New Jersey. Moreover, pursuant to the terms of the proposed new rule, any person acting in concert with the trainer, who is not in good standing with the Commission, shall be liable for a \$5,000 fine and 30-day period of license ineligibility.

Under the Racing Commission's current rules, any licensee who fails to cooperate in an investigation by the Commission is subject to disciplinary action. The proposed new rule N.J.A.C. 13:71-7.26A establishes that any licensed farm or training facility, any individual responsible for the farm or training facility and any licensee present who fail to cooperate with the Commission in the entrance and inspection of the farm or training facility as authorized pursuant to N.J.A.C. 13:71-7.26(d) shall each be liable for a \$1,000 fine.

Finally, proposed new rule N.J.A.C. 13:71-7.26A contains important provisions applicable to multiple offenders. First, the new rule sets forth the current mandate that when a license suspension, period of license ineligibility or license revocation is imposed pursuant to this rule for any violation of N.J.A.C. 13:71-7.26, the subjected person shall be ruled off any premises subject to the jurisdiction of the Racing Commission during the period of license suspension, ineligibility or revocation. Second, the proposed new rule provides that all violations of N.J.A.C. 13:71-7.26, not specifically set forth in the above paragraphs in this rule, shall be subject to the penalties set forth in N.J.A.C. 13:71-2.3. Third, according to the proposed new rule, "[a]ll penalties imposed for violation of N.J.A.C. 13:71-7.26, where multiple infractions of such rule arise as a result of the conduct of the offender, shall run consecutively and not concurrently unless otherwise ordered by the Commission." Fourth, the penalties set forth in N.J.A.C. 13:71-7.26A, or any penalties imposed for a violation of N.J.A.C. 13:71-7.26 pursuant to N.J.A.C. 13:71-2.3, may be

substantially increased for repeat or subsequent offenders of N.J.A.C. 13:71-7.26. Finally, the rule makes it clear that “[i]n the case of repeat offenders, the Commission may impose permanent license ineligibility or license revocation and rule such offenders off all grounds subject to the Commission's jurisdiction for life. In any and all cases, the Commission may impose such conditions as it shall deem appropriate to insure the future compliance of any offender with N.J.A.C. 13:71-7.26.”

As the Racing Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The proposed rule amendments and new rule will help insure the integrity of horseracing by adding stricter regulatory enforcement requirements and mandatory penalties for rule violations. The proposed amendments and new rule are intended to ensure that persons who are suspended, who have had their licenses revoked and who are ineligible for licensure do not have access to racehorses. In doing so, the proposed amendments to N.J.A.C. 13:71-7.26 place a responsibility on trainers and individuals responsible for farms and training facilities to prevent persons not in good standing with the Commission from access to or caring for racehorses. Trainers and individuals responsible for farms and training facilities also have the duty to report the presence of a person not in good standing with the Commission who is on a licensed farm or training facility or on a farm or training

facility that is required to be licensed. Proposed new rule N.J.A.C. 13:71-7.26A imposes penalties should these licensees fail to do so. Accordingly, because the proposed amendments and new rule will help eliminate unauthorized access to racehorses, the social impact will be positive.

### **Economic Impact**

The proposed amendments to N.J.A.C. 13:71-7.26 and new rule N.J.A.C. 13:71-7.26A will likely not have any economic impact on owners of farms or training facilities who comply with the Racing Commission's rules. Although the proposed rules clarify that owners of a farm or training facility which has only racehorses owned by the owners of the farm or training facility present must apply for and obtain licensure of the farm or training facility, the proposed amendments to N.J.A.C. 13:71-7.26 also provide that the Racing Commission may waive the \$50 licensure fee when the owners are already licensed by the Commission. Additionally, there may be costs associated with the policing the grounds of a farm or training facility to ensure that persons not in good standing with the Commission are not present. However, it is anticipated that any such costs would be minimal.

New rule N.J.A.C. 13:71-7.26A will have an economic impact upon owners, trainers and individuals responsible for farms and training facilities who violate the Commission's rules. However, monetary fines will aid the integrity of the horseracing industry by deterring rule violations

### **Federal Standards Statement**

A federal standard's analysis is not required because the rules of racing are dictated by state statute, N.J.S.A. 5:5-22 et seq., and the proposed amendments and new rule are not subject to any federal requirements or standards.

### **Jobs Impact**

The proposed rule amendments and new rule will likely have no impact on the work force in the state and no jobs will be gained or lost.

### **Agriculture Industry Impact**

The proposed rule amendments and new rule will have no impact on the agriculture industry in the state. Racehorses are not considered livestock for the purpose of determining any impact upon the agricultural industry.

### **Regulatory Flexibility Statement**

Standardbred farms and training facilities fall within the definition of small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments to N.J.A.C. 13:71-4.1 and N.J.A.C. 13:71-7.26 and new rule N.J.A.C. 13:71-7.26A impose to reporting, record keeping or compliance requirements on these small businesses. Compliance with the proposed new rule and amendments will likely not require these small businesses to need or obtain professional services, not require initial capital costs and not result in an annual cost for complying. In fact, it is anticipated that the costs associated with the policing the grounds of a farm or training facility to ensure that persons

not in good standing with the Commission are not present will be minimal. It bears repeating, once again, that owners, trainers and individuals responsible for farms and training facilities are currently obligated to ensure that persons not in good standing form do not have access to racehorses. See Summary, supra pages 4 to 6.

New rule N.J.A.C. 13:71-7.26A will have an economic impact upon owners, trainers and individuals responsible for farms and training facilities who violate the Commission's rules. However, the resultant monetary fines will aid the integrity of the horseracing industry by deterring rule violations.

### **Smart Growth Impact**

The proposed amendments and new rule are not anticipated to have an impact on the achievement of smart growth and implementation of the state development and redevelopment plan as defined under Executive Order No. 4 (2002).

Full text of the proposed amendments to the rules follows (additions to text indicated by underline thus; deletions indicated in brackets [thus]):

#### 13:71-4.1 Definitions

- (a) No changes
- (b) “Access to” means present upon the property of a licensed farm or training facility or upon the property of a farm or training facility that is required to be licensed when racehorses are stabled there.

\* \* \*

“Appointed agent” means any person who has received written authorization from the Commission, Executive Director or State Steward to participate in the inspection of a licensed farm or training facility or a farm or training facility that is required to be licensed.

\* \* \*

“Appurtenances” means all areas attached, adjacent or near to all barns and stables, all property where racehorses are or can be located and all areas used in connection with the care, training or racing of horses, including, but not limited to offices and areas which are not used exclusively as a residence.

\* \* \*

“Contact with” means within an arm's reach of a racehorse.

\* \* \*

“Enclosures” means all cabinets, cases, cupboards, chests, closets, trunks, containers, desks, drawers and other areas and objects where items may be placed as well as the interior and trunk of vehicles located on the premises.

\* \* \*

“Farm” means any property with accommodations suitable for stabling horses.

“Farms and training facilities that are required to be licensed” means any farm or training facility which has allowed a racehorse remain overnight on the property.

\* \* \*

“Individuals responsible for the farm or training facility” means the owner(s) and manager(s) of the farm or training facility as well as any other person who is responsible for the daily management of the farm or training facility for at least ninety days within a calendar year.

\* \* \*

“Investigative staff” means employees or appointed agents of the Commission who has been directed to inspect a farm or training facility by the Executive Director or State Steward.

\* \* \*

“License revocation” means that the person who has received this penalty is permanently barred from receiving any license from the New Jersey Racing Commission. The effect of “license revocation” is the same as “permanent license ineligibility.” “License revocation” is imposed when the person barred possesses a valid New Jersey Racing Commission license at the time “license revocation” is imposed. Any person who is penalized with “license revocation” shall be ruled off all grounds subject to the Commission’s jurisdiction for life.

\* \* \*

“Nonracing horse” means foals, weanlings, yearlings, broodmares which no longer participate in racing and stallions which no longer participate in racing.

\* \* \*

“Permanent license ineligibility” means that the person who has received this penalty is permanently barred from submitting an application to the New Jersey Racing Commission for any license category. The effect of “permanent license ineligibility” is the same as “license revocation.” “Permanent license ineligibility” is imposed when the person barred does not possess a valid New Jersey Racing Commission license at the time “permanent license ineligibility” is imposed. Any person who is penalized with “permanent license ineligibility” shall be ruled off all grounds subject to the Commission’s jurisdiction for life.

“Person not in good standing with the Commission” means any person who is serving a suspension issued by the Commission, has sought licensure from the Commission but has not been recommended, has been denied licensure by the Commission or is not eligible for licensure by the Commission.

\* \* \*

“Racehorse” means any standardbred horse that is or should be registered with the United States Trotting Association, Canadian Trotting Association or other recognized trotting association that is or will be eligible to participate in a horseracing contest under the jurisdiction of the New Jersey Racing Commission.

\* \* \*

“Training facility” means any property with a track suitable for training racehorses.

13:71-7.26 Requirements: Farms [or licensed tracks] and Training Facilities and the Persons Situated Thereon

(a) No horse may be entered to start or shall start in any race upon which [wherein] pari-mutuel wagering is conducted unless it is stabled, as defined below, on the grounds of a racing association [licensed by the Commission] or at a farm or training facility licensed by the Commission. All farms and training facilities wherein racehorses are located must apply for and receive a license from the Commission. Nothing in this rule shall prohibit any horse stabled outside the State of New Jersey from [vanning] being transported directly to any racing association in this State to start in any race upon which pari-mutuel wagering is conducted provided that

1. the owner and trainer of the racehorse have ensured, while the horse has been in their custody and control, that no person not in good standing with the Commission has acted in any capacity of caretaker, groom, assistant trainer, trainer, driver or other attendant with respect to the care or training of the racehorse prior to its transportation into the State of New Jersey; and

2. all persons attending to the horse in New Jersey are licensed by the Commission.

(b) recodified as (i) with no change in text.

(b) “Stabled” means the premises at which a racehorse maintains a regular and continuous physical presence. In order for a racehorse to be stabled at a New Jersey licensed

premise in compliance with this rule, the racehorse may not be physically situated at the licensed premise on an intermittent basis. For example, where a racehorse is “turned out” or for any other reason relocated between race competitions from a licensed farm or training facility to a second farm or training facility, a violation of this rule would occur unless that second farm, training facility or other premises is also licensed by the Commission in accordance with this rule.

[(c) Any farm or training center making application for licensure as an off-track stabling facility shall pay a \$50.00 annual license fee and be liable to inspection by the employees of the Commission and shall be required to provide unrestricted access to all stabling facilities to the employees and agent of the Commission upon demand.]

(c) All farms and training facilities shall apply for licensure and pay a \$50.00 annual licensing fee. The Commission may waive the annual licensing fee under the following circumstances:

1. the farm or training facility is owned by an individual licensed by the Commission who has paid the fee required in N.J.A.C. 13:71-7.1 for an individual license;
2. the only horses located at the farm or training facility are owned entirely and exclusively by the owner of the farm or training facility who is individually licensed; and
3. the Commission posts notice of the fee waiver in all offices where

license applications may be submitted.

[(d) Any horse in training or entered to start stabled on such a farm or training center must be under the care and custody of a licensed trainer. It shall be the responsibility of the trainer to insure that only individuals licensed by the Commission are employed in any capacity of caretaker, groom or other attendant with respect to the care-custody and training of such a horse. Nothing in this section shall be deemed to apply to brood mares, foals, weanlings, yearlings, stallions or other horses not in training.]

(d) All licensed farms and training facilities shall permit investigative staff to enter the premises at any time to inspect, ascertain whether the premises and all licensees are in full compliance with the Commission's rules, and determine whether drugs, substances foreign to the natural horse and instruments used for the administration of drugs or foreign substances are present. To facilitate entry and inspection of licensed farms and training facilities, the Executive Director or the State Steward may issue an administrative directive setting forth instructions for investigative staff.

1. The persons responsible for the farm or training facility, the owner of the farm or training facility, a lessee of the farm or training facility and the licensees present shall permit investigative staff unrestricted access to all areas, including but not limited to, in and around barns, areas where racehorses are or can be located, appurtenances to areas where racehorses are or can be located, areas where equipment or tack is or can be located and all enclosures present therein.

2. Investigative staff shall carry identification and produce it upon demand.

3. All licensees shall fully cooperate with the requests and instructions of the investigative staff. Upon request, all licensees shall open locked areas including, but not limited to locked doors, locked enclosures, locked automobiles and locked automobile trunks. Investigative staff shall inform any licensee who fails to cooperate that he or she has an affirmative duty to cooperate pursuant to N.J.A.C. 13:71-23.2 and that sanctions such as suspension, fines or license revocation may be imposed for failure to cooperate.

4. Investigative staff shall identify all persons who have access to the horses located on the premises. All licensees shall fully cooperate in the identification of persons not licensed.

5. Investigative staff shall have the authority to inspect any enclosure which is alleged to be the personal property of a person not licensed by the Commission if:

i. investigative staff has reason to believe that drugs, substances foreign to the natural horse and instruments used for their administration are located in the enclosure; or

ii. the Executive Director or State Steward has issued an administrative directive specifically authorizing investigative staff to inspect

all enclosures, including those claimed to be personal property.

iii. If the person not licensed by the Commission objects or does not consent to the inspection, investigative staff may seek the assistance of the licensees present as well as State, county or local police in detaining the enclosure until investigative staff obtains an administrative warrant from the Executive Director or State Steward.

6. Investigative staff may videotape or photograph any part or all of an inspection.

7. In the event that investigative staff seizes any object present in violation of the Commission's rules, staff shall give a receipt for the property seized to the person from whom it was taken or in whose possession it was found or in the absence of such person, leave a receipt for the property seized in or upon the location from which the property was taken.

(e) recodified as (j) with no change in text.

(e) All farms and training facilities that are required to be licensed but have failed to apply for licensure shall permit investigative staff to enter the premises to inspect, determine whether racehorses are located there, ascertain whether the premises and persons present are otherwise in full compliance with the Commission's rules and investigate information indicating that drugs, substances foreign to the natural horse or instruments used for their administration are present. To facilitate entry to farms and training facilities that

are required to be licensed but have failed to apply for licensure, the Executive Director or the State Steward shall issue an administrative warrant setting forth instructions for and restrictions on entry and inspection. The administrative warrant may require investigative staff to seek the assistance of State, county or local police in carrying out the terms of the administrative warrant.

1. An administrative warrant shall include the following restrictions on entry and inspection.

i. Investigative staff shall execute the administrative warrant during daylight hours;

ii. Investigative staff shall present identification upon entrance to the property and allow inspection of the administrative warrant to all persons who ask;

iii. Investigative staff shall ascertain whether there are racehorses located upon the property and identify all persons who have access to them. If the staff ascertains that there are no racehorses present, staff shall immediately leave the property if asked to do so by the owner or lessee of the property. No further inspection of the property shall take place unless the owner or lessee of the property consents in writing;

iv. In the event that investigative staff seizes any object present in violation of the Commission's rules, staff shall give a receipt for the property

seized to the person from whom it was taken or in whose possession it was found or in the absence of such person, leave a receipt for the property seized in or upon the location from which the property was taken; and

v. Investigative staff shall not have the authority to inspect any building used exclusively as a residence unless the owner or lessee consents in writing.

2. Upon identifying the presence of racehorses, the investigative staff shall have unrestricted access to all areas including, but not limited to, in and around barns, areas where racehorses are or can be located, appurtenances to areas where racehorses are or can be located and all enclosures present therein.

3. All persons present upon an unlicensed farm where racehorses are located shall fully cooperate with the requests and instructions of the investigative staff. Upon request, persons present shall open locked areas including, but not limited to locked doors, locked enclosures, locked automobiles and locked automobile trunks. Failure to cooperate may result in the imposition of administrative sanctions.

4. Investigative staff shall have the authority to inspect any enclosure which has been alleged to be the personal property of a person not licensed by the Commission if the administrative warrant issued by the Executive Director or State Steward specifically authorizes investigative staff to inspect all enclosures including

those claimed to be personal property. If the person not licensed by the Commission objects or does not consent to the inspection, investigative staff shall seek the assistance of State, county or local police in detaining the enclosure until a civil search warrant may be obtained from the Superior Court of New Jersey for the County of Mercer on an emergent basis.

5. Investigative staff may videotape or photograph any part or all of an inspection.

(f) recodified as (k) as amended.

(f) All racehorses on a licensed farm or training facility must be under the care, custody and control of a licensed trainer. It shall be the responsibility of all racehorse owners to ensure that the trainer(s) of their racehorses possesses, at all times, a valid New Jersey trainer's license. Racehorse owners shall keep apprised of their trainer(s) licensure status and shall remove their racehorses immediately from the trainer(s) if his license is suspended, revoked or otherwise lapses. It shall be the responsibility of the trainer to ensure that only individuals licensed by the Commission act in any capacity of caretaker, groom or other attendant with respect to the care, custody or training of a racehorse. It shall also be the responsibility of the trainer to ensure that persons not in good standing with the Commission do not have access to or contact with any racehorse under his or care, custody and control.

(g) Notwithstanding (f) above, nonracing horses may be kept at an unlicensed farm or training facility. When nonracing horses are present at a licensed farm or training

facility, however, only individuals licensed by the Commission may act in any capacity of caretaker, groom or other attendant with respect to the care, custody or training of these nonracing horses. It shall be the responsibility of the person or persons responsible for the care, custody and control of the nonracing horse to ensure that persons not in good standing with the Commission do not have access to or contact with any horse under his or care, custody and control.

(h) It shall also be the responsibility of all farms and training facilities and the individuals responsible for the farm or training facility to ensure that any person not in good standing with the Commission is restricted from entering any property where racehorses are located. A farm, training facility and the individuals responsible for the farm or training facility shall notify the Commission immediately if an unlicensed person acts in any capacity of caretaker, groom or other attendant with respect to the care, custody or training of a racehorse located on the farm or training facility.

(i) A license shall not be issued to any farm or training center not in compliance with the following requirements:

1. All box stalls shall be properly ventilated and measure approximately 10 feet by 10 feet or larger;
2. Arrangements for the disposal of manure and other refuse shall be made in compliance with appropriate State and municipal health codes and/or ordinances;
3. Adequate spraying and/or fogging equipment must be available; and

4. Any farm or training center that is placed under quarantine by the New Jersey Department of Agriculture shall have their license immediately suspended. Any facility whose license is so suspended, shall be afforded the right of appeal as provided for in N.J.A.C. 13:71-3.

(j) It shall be the responsibility of the farm manager or training center manager to complete and file all reports required of him by the Commission. It shall similarly be the responsibility of the trainer to complete and file all reports required of him by the Commission, including, but not limited to, the Equine Fatality Report (see: N.J.A.C. 13:71-20.24).

(k) Failure to comply with the requirements in this section shall subject the offending party to the penalties provided for in N.J.A.C. 13:71-7.26A and N.J.A.C. 13:71-2.3. Further, violation of this section may subject the offending party to suspension, revocation or denial of the farm license and/or declaration of ineligibility for stables or horses involved.

Full text of the proposed new rule follows:

13:71-7.26A Penalties for Violation of N.J.A.C. 13:71-7.26

(a) A farm or training facility that is required to be licensed and the individuals responsible for the farm or training facility shall each be liable for a \$1,000 fine for the first violation of N.J.A.C. 13:71-7.26(a) or (c) if the farm or training facility is otherwise in

compliance with all other rules of the Commission. Upon receipt of notice that the continued operation of the farm or training facility violates the Commission's rules, the individuals responsible for the farm or training facility shall bring the farm or training facility into compliance with the Commission's rules within 48 hours and all activities requiring licensure must cease immediately until full compliance has been achieved. The farm or training facility and the individuals responsible for the farm or training facility shall each be liable for an additional penalty of a \$2,500 fine for each subsequent day of noncompliance.

(b) A farm or training facility that is required to be licensed and the individuals responsible for the farm or training facility shall each be liable for a \$5,000 fine for the first violation of N.J.A.C. 13:71-7.26(a),(c) or (h) if the farm or training facility has allowed a person not in good standing with the Commission to have access to or contact with any racehorse located on the farm or training facility. Upon receipt of notice that the continued operation of the farm or training facility violates the Commission's rules, the individuals responsible for the farm or training facility shall bring the farm or training facility into compliance with the Commission's rules within 48 hours and all activities requiring licensure must cease immediately and persons not in good standing with the Commission must be prohibited from access to or contact with racehorses. The farm or training facility and the individuals responsible for the farm or training facility shall each be liable for an additional penalty of a \$5,000 fine for each subsequent day of noncompliance. The person

not in good standing with the Commission shall be liable for a \$5,000 fine for each day present, suspension, permanent license ineligibility and license revocation. For repeat offenders, the Commission may rule the person not in good standing with the Commission off all grounds subject to the Commission's jurisdiction for life.

(c) In addition to the penalties provided for in this rule, any farm or training facility that is required to be licensed and the individuals responsible for the farm or training facility and any licensees who are present who fail to cooperate with the Commission in the entrance and inspection of the farm or training facility that is required to be licensed as authorized pursuant to N.J.A.C. 13:71-7.26(e) shall each be liable for a \$1,000 fine.

(d) A licensed farm or training facility and the individuals responsible for the farm or training facility shall each be liable for a \$2,500 fine for the first violation of N.J.A.C. 13:71-7.26(h) if the farm or training facility has allowed a person not in good standing with the Commission to have access to or contact with any racehorse located on the farm or training facility. A licensed farm or training facility and the individuals responsible for the farm or training facility who commit a second violation of this rule shall each be liable for a \$5,000 fine for each subsequent day of noncompliance. The person not in good standing with the Commission shall be liable for a \$5,000 fine for each day present at a farm or training facility, suspension, permanent license ineligibility and license revocation. During any suspension, license ineligibility or license revocation, the Commission shall rule the person not in good standing with the Commission off all grounds subject to the Commission's

jurisdiction for the duration of the penalty. For repeat offenders, the Commission may rule the person not in good standing with the Commission off all grounds subject to the Commission's jurisdiction for life.

(e) Any licensed farm or training facility, any individual responsible for the farm or training facility and any licensee present who fail to cooperate with the Commission in the entrance and inspection of the farm or training facility as authorized pursuant to N.J.A.C. 13:71-7.26(d) shall each be liable for a \$1,000 fine.

(f) A trainer shall be liable for a \$2,500 fine for the first violation of N.J.A.C. 13:71-7.26(f) if the trainer has allowed a person not in good standing with the Commission to act in any capacity of caretaker, groom or other attendant with respect to the care, custody or training of a racehorse under his or care, custody and control. A trainer who commits a second violation of this rule shall be liable for a \$5,000 fine. A trainer who commits a third violation of this rule shall be liable for a minimum fine of \$5,000 and a minimum suspension of 1 year. The person not in good standing with the Commission shall be liable for a \$5,000 fine for each day present at a farm or training facility, suspension, permanent license ineligibility and license revocation. The Commission shall rule the person not in good standing with the Commission off all grounds subject to the Commission's jurisdiction for the duration of the penalty. For repeat offenders, the Commission may rule the trainer or person not in good standing with the Commission off all grounds subject to the Commission's jurisdiction for life.

(g) A racehorse owner shall be liable for a \$2,500 fine for the first violation of N.J.A.C. 13:71-7.26(f) if he has allowed a person not in good standing with the Commission to train a racehorse he owns in full or part. A racehorse owner who commits a second violation of this rule shall be liable for a \$5,000 fine. A racehorse owner who commits a third violation of this rule shall be liable for a minimum fine of \$5,000 and a minimum suspension of 1 year. The person not in good standing with the Commission shall be liable for a \$5,000 fine for each day present at a farm or training facility, suspension, permanent license ineligibility and license revocation. The Commission shall rule the person not in good standing with the Commission off all grounds subject to the Commission's jurisdiction for the duration of the penalty. For repeat offenders, the Commission may rule the racehorse owner or person not in good standing with the Commission off all grounds subject to the Commission's jurisdiction for life.

(h) A trainer shall be liable for a \$1,000 fine for the first violation of N.J.A.C. 13:71-7.26(f) if the trainer has allowed a person not in good standing with the Commission to have access to or contact with any racehorse under his or care, custody and control. A trainer who commits a second violation of this rule shall be liable for a \$2,500 fine for each subsequent day of noncompliance. A trainer who commits a third violation of this rule shall be liable for a minimum fine of \$5,000 and a minimum suspension of 1 year. The person not in good standing with the Commission shall be liable for a \$5,000 fine for each day present at a farm or training facility, suspension, permanent license ineligibility and license revocation. The

Commission shall rule the person not in good standing with the Commission off all grounds subject to the Commission's jurisdiction for the duration of the penalty. For repeat offenders, the Commission may rule the person not in good standing with the Commission off all grounds subject to the Commission's jurisdiction for life.

(i) Any trainer who enters a racehorse which is not stabled in compliance with N.J.A.C. 13:71-7.26(a) to race in New Jersey and any person who acts in concert with that trainer in contravention of the Commission's rules shall be liable for a \$5,000 fine and 30-day suspension for each horse entered. All racehorses in the trainer's care, custody and control shall be subject to an immediate declaration of ineligibility to participate in racing until stabled at a properly licensed farm or training facility within New Jersey. If any person acting in concert with the trainer is not in good standing with the Commission, he shall be liable for a \$5,000 fine and 30-day period of license ineligibility.

(j) Where a license suspension, period of license ineligibility or license revocation is imposed pursuant to this rule for any violation of N.J.A.C. 13:71-7.26, the subjected person shall be ruled off any premises subject to the jurisdiction of the Racing Commission during the period of license suspension, ineligibility or revocation. All violations of N.J.A.C. 13:71-7.26, not specifically set forth in the above paragraphs in this rule, shall be subject to the penalties set forth in N.J.A.C. 13:71-2.3. All penalties imposed for violation of N.J.A.C. 13:71-7.26, where multiple infractions of such rule arise as a result of the conduct of the offender, shall run consecutively and not concurrently unless otherwise ordered by the

Commission. Additionally, the penalties set forth above, or any penalties imposed for a violation of N.J.A.C. 13:71-7.26 pursuant to N.J.A.C. 13:71-2.3, may be substantially increased for repeat or subsequent offenders of N.J.A.C. 13:71-7.26. In the case of repeat offenders, the Commission may impose permanent license ineligibility or license revocation and rule such offenders off all grounds subject to the Commission's jurisdiction for life. In any and all cases, the Commission may impose such conditions as it shall deem appropriate to insure the future compliance of any offender with N.J.A.C. 13:71-7.26.